

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BOYD ENFIELD,

Plaintiff,

V.

CAROLYN W. COLVIN,
Acting Commissioner of Social
Security,

Defendant.

No. 1:15-CV-03032-RHW

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment, ECF Nos. 14 & 19. Mr. Enfield brings this action seeking judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision, which denied his application for Disability Insurance Benefits and Supplemental Security Income under Titles II & XVI of the Social Security Act, 42 U.S.C §§ 401-434 & 1381-1383F. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the Court

1 **GRANTS** Plaintiff's Motion for Summary Judgment and **REMANDS** for
2 additional proceedings consistent with this order.

3 **I. Jurisdiction**

4 Mr. Enfield filed for Disability Insurance Benefits on December 15, 2011,
5 AR 182, and Supplemental Security Income on February 9, 2012. AR 185. His
6 amended alleged onset date is August 1, 2003. AR 182. Mr. Enfield's application
7 was initially denied on June 12, 2012, AR 107-109, and on reconsideration on
8 October 23, 2012, AR 124-125.

9 A hearing with Administrative Law Judge ("ALJ") Virginia M. Robinson
10 occurred on August 1, 2003. AR 25-54. On November 13, 2013, the ALJ issued a
11 decision finding Mr. Enfield ineligible for disability benefits. AR 10-20. The
12 Appeals Council denied Mr. Enfield's request for review on January 8, 2015, AR
13 1-3, making the ALJ's ruling the "final decision" of the Commissioner.

14 Mr. Enfield timely filed the present action challenging the denial of benefits,
15 on February 23, 2015. ECF No. 4. Accordingly, Mr. Enfield's claims are properly
16 before this Court pursuant to 42 U.S.C. § 405(g).

17 **II. Sequential Evaluation Process**

18 The Social Security Act defines disability as the "inability to engage in any
19 substantial gainful activity by reason of any medically determinable physical or
20 mental impairment which can be expected to result in death or which has lasted or

1 can be expected to last for a continuous period of not less than twelve months.” 42
2 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be
3 under a disability only if the claimant’s impairments are of such severity that the
4 claimant is not only unable to do his previous work, but cannot, considering
5 claimant’s age, education, and work experience, engage in any other substantial
6 gainful work that exists in the national economy. 42 U.S.C. §§ 423(d)(2)(A) &
7 1382c(a)(3)(B).

8 The Commissioner has established a five-step sequential evaluation process
9 for determining whether a claimant is disabled within the meaning of the Social
10 Security Act. 20 C.F.R. §§ 404.1520(a)(4) & 416.920(a)(4); *Lounsherry v.*
11 *Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

12 Step one inquires whether the claimant is presently engaged in “substantial
13 gainful activity.” 20 C.F.R. §§ 404.1520(b) & 416.920(b). Substantial gainful
14 activity is defined as significant physical or mental activities done or usually done
15 for profit. 20 C.F.R. §§ 404.1572 & 416.972. If the claimant is engaged in
16 substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§
17 404.1571 & 416.920(b). If not, the ALJ proceeds to step two.

18 Step two asks whether the claimant has a severe impairment, or combination
19 of impairments, that significantly limits the claimant’s physical or mental ability to
20 do basic work activities. 20 C.F.R. §§ 404.1520(c) & 416.920(c). A severe

1 impairment is one that has lasted or is expected to last for at least twelve months,
2 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09 &
3 416.908-09. If the claimant does not have a severe impairment, or combination of
4 impairments, the disability claim is denied, and no further evaluative steps are
5 required. Otherwise, the evaluation proceeds to the third step.

6 Step three involves a determination of whether any of the claimant's severe
7 impairments "meets or equals" one of the listed impairments acknowledged by the
8 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
9 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
10 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
11 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
12 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to
13 the fourth step.

14 Step four examines whether the claimant's residual functional capacity
15 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f)
16 & 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant
17 is not entitled to disability benefits and the inquiry ends. *Id.*

18 Step five shifts the burden to the Commissioner to prove that the claimant is
19 able to perform other work in the national economy, taking into account the
20 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),

1 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
2 burden, the Commissioner must establish that (1) the claimant is capable of
3 performing other work; and (2) such work exists in “significant numbers in the
4 national economy.” 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
5 676 F.3d 1203, 1206 (9th Cir. 2012).

6 III. Standard of Review

7 A district court's review of a final decision of the Commissioner is governed
8 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
9 Commissioner's decision will be disturbed “only if it is not supported by
10 substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1144,
11 1158-59 (9th Cir. 2012) (citing § 405(g)). Substantial evidence means “more than
12 a mere scintilla but less than a preponderance; it is such relevant evidence as a
13 reasonable mind might accept as adequate to support a conclusion.” *Sandgathe v.*
14 *Chater*, 108 F.3d 978, 980 (9th Cir. 1997) (quoting *Andrews v. Shalala*, 53 F.3d
15 1035, 1039 (9th Cir. 1995)) (internal quotation marks omitted). In determining
16 whether the Commissioner's findings are supported by substantial evidence, “a
17 reviewing court must consider the entire record as a whole and may not affirm
18 simply by isolating a specific quantum of supporting evidence.” *Robbins v. Soc.*
19 *Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006) (quoting *Hammock v. Bowen*, 879
20 F.2d 498, 501 (9th Cir. 1989)).

1 In reviewing a denial of benefits, a district court may not substitute its
2 judgment for that of the ALJ. *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir.
3 1992). If the evidence in the record “is susceptible to more than one rational
4 interpretation, [the court] must uphold the ALJ's findings if they are supported by
5 inferences reasonably drawn from the record.” *Molina v. Astrue*, 674 F.3d 1104,
6 1111 (9th Cir. 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
7 2002) (if the “evidence is susceptible to more than one rational interpretation, one
8 of which supports the ALJ’s decision, the conclusion must be upheld”). Moreover,
9 a district court “may not reverse an ALJ's decision on account of an error that is
10 harmless.” *Molina*, 674 F.3d at 1111. An error is harmless “where it is
11 inconsequential to the [ALJ's] ultimate nondisability determination.” *Id.* at 1115.
12 The burden of showing that an error is harmful generally falls upon the party
13 appealing the ALJ's decision. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

14 **IV. Statement of Facts**

15 The facts of the case are set forth in detail in the transcript of proceedings,
16 and only briefly summarized here. Mr. Enfield was 32 years old at the alleged date
17 of onset. AR 167. He has earned his GED. AR 50-51. Mr. Enfield sustained
18 injuries in a car accident in 2003, and the ALJ found Mr. Enfield to suffer from
19 degenerative disc disease. AR 12. Mr. Enfield has also been diagnosed by a
20 consultative examiner to have impulse control anger issues, psychotic disorder,

1 antisocial personality disorder, and personality disorder not otherwise specified.

2 AR 30. He also has a history of methamphetamine use. AR 32-33.

3 Mr. Enfield previously worked as a telemarketer. AR 45-46. He also did
4 shop maintenance work, ground manager work, and packed apples prior to his car
5 accident. AR 19. He has some limited work experience from prison. AR 45.

6 V. The ALJ's Findings

7 The ALJ determined that Mr. Enfield was not under a disability within the
8 meaning of the Act from August 1, 2003, his alleged date of onset. AR 20.

9 **At step one**, the ALJ found that Mr. Enfield had not engaged in substantial
10 gainful activity since August 1, 2003 (citing 20 C.F.R. §§ 404.1571 *et seq.* &
11 416.971 *et seq.*). AR 12.

12 **At step two**, the ALJ found Mr. Enfield had the following severe
13 impairments: degenerative disc disease (citing 20 C.F.R. §§ 404.1520(c) &
14 416.920(c)). AR 12.

15 **At step three**, the ALJ found that Mr. Enfield did not have an impairment or
16 combination of impairments that meets or medically equals the severity of one of
17 the listed impairments in 20 C.F.R. §§ 404, Subpt. P, App. 1. AR 22-25.

18 **At step four**, the ALJ found Mr. Enfield had the residual functional capacity
19 to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b) with these
20 exceptions: (1) he can lift up to twenty pounds occasionally and lift or carry ten

1 pounds frequently; (2) he can stand or walk approximately six hours in an eight-
2 hour workday; (3) he can sit approximately six hours in an eight-hour workday
3 with normal breaks; (4) he can occasionally climb ramps, stairs, ladders, ropes, and
4 scaffolds; and (5) he can occasionally balance, stoop, kneel, crouch, and crawl. AR
5 16.

6 The ALJ determined that Mr. Enfield is able to perform his past relevant
7 work as a telemarketer because it does not require activities precluded by his
8 residual functional capacity. AR 18-19.

9 At step five, the ALJ found that, in the alternative, in light of his age,
10 education, work experience, and residual functional capacity, in conjunction with
11 the Medical-Vocational Guidelines, there are also other jobs that exist in
12 significant numbers in the national economy that he can perform. AR 19.

13 VI. Issues for Review

14 Mr. Enfield argues that the Commissioner's decision is not free of legal error
15 and not supported by substantial evidence. Specifically, he argues the ALJ erred
16 by: (1) rejecting Mr. Enfield's mental health impairments at step two; (2)
17 improperly rejecting the opinions of Mr. Enfield's medical providers; (3)
18 improperly rejecting Mr. Enfield's subjective complaints and lay testimony; (4)
19 failing to conduct a proper step four assessment; and (5) failing to meet the step
20 five burden.

VII. Discussion

A. The ALJ Erred in Her Step Two Analysis.

At step two in the five-step sequential evaluation for Social Security cases, the ALJ must determine whether a claimant has a medically severe impairment or combination of impairments. An impairment is found to be not severe “when medical evidence establishes only a slight abnormality or a combination of slight abnormalities which would have no more than a minimal effect on an individual’s ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting SSR 85-28). Step two is generally “a de minimis screening device [used] to dispose of groundless claims,” and the ALJ is permitted to find a claimant lacks a medically severe impairment only when the conclusion is clearly established by the record. *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.1996)).

14 The ALJ found Mr. Enfield's mental impairments, impulse control anger
15 issues and antisocial personality disorders, as diagnosed by Dr. Manuel Gomes,
16 PhD, to be non-severe, and she found no evidence of psychotic disorder. AR 13-
17 15. Dr. Gomes found Mr. Enfield capable of performing simple, repetitive tasks
18 and some complex, detailed tasks, and generally Mr. Enfield was mildly impaired.
19 AR 431-32. However, Dr. Gomes found Mr. Enfield severely impaired in his
20 ability to deal with usual stress encountered in the workplace. AR 432. The ALJ

1 rejected this portion of the opinion because, the ALJ asserted, it was based on the
2 subjective information of Mr. Enfield that was not credible. AR 14. *See infra* pp.
3 16-20.

4 Under step 2, an impairment is not severe if it does not significantly limit a
5 claimant's ability to perform basic work activities. *Edlund v. Massanari*, 253 F.3d
6 1152, 1159 (9th Cir. 2001) (citing 20 C.F.R. § 404.1521(a)(b)). These include the
7 ability to respond appropriately to supervision, co-workers, and usual work
8 situations. *Id.* (citing 20 C.F.R. § 404.1521(b)(5)). Therefore, the opinion that Mr.
9 Enfield could not adapt to normal workplace stress, particularly with regard to
10 interpersonal relations, should qualify as a severe impairment under step 2.

11 Because Mr. Enfield was found to have at least one severe impairment, this
12 case was not resolved at step two. Mr. Enfield does not assign error to the ALJ's
13 finding at step three. Thus, any error in the ALJ's finding at step two is harmless, if
14 all impairments, severe and non-severe, were considered in the determination Mr.
15 Enfield's residual functional capacity. *See Lewis v. Astrue*, 498 F.3d 909, 910 (9th
16 Cir. 2007) (holding that a failure to consider an impairment in step two is harmless
17 error where the ALJ includes the limitations of that impairment in the
18 determination of the residual functional capacity). Because the ALJ failed to
19 account for all of these impairments in step four, the Court finds this was not
20 harmless error.

1 **B. The Rejection of Some of Mr. Enfield's Doctors was in Error.**

2 **1. Legal Standard.**

3 The Ninth Circuit has distinguished between three classes of medical
4 providers in defining the weight to be given to their opinions: (1) treating
5 providers, those who actually treat the claimant; (2) examining providers, those
6 who examine but do not treat the claimant; and (3) non-examining providers, those
7 who neither treat nor examine the claimant. *Lester v. Chater*, 81 F.3d 821, 830 (9th
8 Cir. 1996) (as amended).

9 A treating provider's opinion is given the most weight, followed by an
10 examining provider, and finally a non-examining provider. *Id.* at 830-31. In the
11 absence of a contrary opinion, a treating or examining provider's opinion may not
12 be rejected unless "clear and convincing" reasons are provided. *Id.* at 830. If a
13 treating or examining provider's opinion is contradicted, it may only be discounted
14 for "specific and legitimate reasons that are supported by substantial evidence in
15 the record." *Id.* at 830-31.

16 The ALJ may meet the specific and legitimate standard by "setting out a
17 detailed and thorough summary of the facts and conflicting clinical evidence,
18 stating his interpretation thereof, and making findings." *Magallanes v. Bowen*, 881
19 F.2d 747, 751 (9th Cir. 1989) (internal citation omitted). When rejecting a treating
20 provider's opinion on a psychological impairment, the ALJ must offer more than

1 his or her own conclusions and explain why he or she, as opposed to the provider,
2 is correct. *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988).

3 **2. Dr. Gomes**

4 Dr. Gomes was an examining doctor. The ALJ and the parties do not cite to
5 a contrary opinion, nor does the Court's review of the record find one. Non-
6 examining doctor Dr. Diane Fligstein, PhD, corroborates the finding of Dr. Gomes
7 and recommends that Mr. Enfield to work away from the general public, as he is
8 only "capable of superficial coworker contact of a non-cooperative nature." AR 66.
9 Another non-examining doctor, Dr. Steven Haney, MD, affirmed this opinion and
10 also limited work settings to those "that require minimal interpersonal contact."
11 AR 87. Thus, in the absence of a contrary opinion, the ALJ was required to provide
12 clear and convincing reasons to reject Dr. Gomes's opinion. *Lester*, 81 F.3d at 830.

13 The ALJ afforded some weight to Dr. Gomes's opinion, but she rejected his
14 findings of psychotic disorder, AR 13, and his assessment that Mr. Enfield has
15 severe limitations in his ability to deal with usual stress encountered in a
16 workplace. AR 14. The ALJ reasoned that these findings were inconsistent with
17 the record and based on the unreliable reports of the claimant. AR 13-14.

18 An ALJ may rely on doubts about credibility to reject part of a doctor's
19 opinion, but they must also sustain the clear and convincing burden to reject that
20 which is not based on subjective complaints. *See Edlund*, 253 F.3d at 1159 (finding

1 error with an ALJ's reliance on credibility doubts to reject the entire report of a
2 physician, including portions that could be deemed otherwise reliable).

3 The ALJ asserted that Dr. Gomes diagnosed a psychotic disorder based on
4 hallucinations in prison. AR 13. At his appointment with Dr. Gomes, Mr. Enfield
5 stated that he had problems with hallucinations when he was in "the hole" for five
6 months at a time. AR 429. The available prison records do not reflect any
7 behavioral problems. AR 362-385. However, the record does indicate that he was
8 prescribed Celexa and Risperdal. AR 375. While the record does not demonstrate
9 psychotic behavior, it also does not explain why his prison physicians chose to put
10 Mr. Enfield on antipsychotic medication. *Id.* It is not unreasonable for Dr. Gomes
11 to diagnose a psychotic condition based on a previous prescription of antipsychotic
12 medication, even if the record does not specifically indicate instances of psychotic
13 behavior.

14 Further, Dr. Gomes performed objective testing, in addition to reviewing
15 Mr. Enfield's history. AR 427-432. An impairment may be determined by
16 medically-acceptable clinical diagnoses, as well as objective medical findings. *Day*
17 *v. Weinberger*, 522 F.2d 1154, 1156 (9th Cir. 1975). In this case, Dr. Gomes
18 provides both. Upon review of the opinion, the Court notes no evidence of concern
19 by Dr. Gomes that the testing performed was unreliable or that the doctor
20 suspected malingering. AR 427-432. It is unclear how much the objective testing

1 versus subjective history influenced Dr. Gomes. Even the ALJ asserted that it
2 appeared Dr. Gomes “relied in part on the claimant’s self-report about his prison
3 and past behavioral problems,” AR 14 (emphasis added), which implies that the
4 ALJ recognized some of the opinion was based on objective, clinical opinions.

5 The ALJ points to inconsistencies with Mr. Enfield’s activities of daily
6 living. The Court does not agree that having a family and romantic relationship are
7 evidence that Mr. Enfield is not limited in his dealing with typical workplace
8 stressors. Even the most extreme anxiety cases do not require complete isolation at
9 all times, and the Court does not find that having family is preclusive from having
10 disabling social conditions.

11 Further, the statement from Krista Lortie, Mr. Enfield’s girlfriend,
12 corroborates his personality impairments. The ALJ ignored this testimony entirely.
13 *See infra* pp. 20-22. Ms. Lortie stated that Mr. Enfield has problems getting along
14 with family, friends, neighbors, and others. AR 242. Specifically, she stated that he
15 “gets irritable and upset at others, sometimes for no real reason.” *Id.* She also
16 offered that Mr. Enfield “no longer goes and hangs out with old friends doing
17 things they used to do.” *Id.* Simply because Ms. Lortie has continued her
18 relationship with Mr. Enfield despite his personality impairments, does not rise to a
19 legally sufficient reason to reject the opinion of an examining doctor.

20

1 There is no evidence that Mr. Enfield regularly spends time in crowds,¹ and
 2 the limited occasions that are spent in public are not inconsistent with the specific
 3 limitations found by Dr. Gomes. For example, the ability to grocery shop (AR 261)
 4 is not inconsistent with Dr. Gomes's assessment. Dr. Gomes offered a very specific
 5 limitation that was tailored to "the usual stress encountered in a competitive
 6 workplace." AR 432. Dr. Gomes opined that because Mr. Enfield has not learned
 7 to properly manage his stress, in light of personality disorder, he would walk away
 8 from a particularly stressful situation. *Id.* Whereas this would be unacceptable
 9 behavior in a workplace, it would not be significant in a grocery store.

10 Finally, the Commissioner is unavailable with the argument that Dr.
 11 Gomes's opinion is inconsistent because Mr. Enfield had never been let go from a
 12 job because he was unable to get along with others. ECF No. 19 at 8. As Dr.
 13 Gomes correctly points out, Mr. Enfield "has not had a significant work history."
 14 AR 431. It is not unreasonable that he has not been dismissed, particularly if he has
 15 spent a large portion of his adult life in prison.

16 The ALJ failed to provide clear and convincing reasons for rejecting the
 17 opinion of Dr. Gomes. The ALJ did not account for any mental impairments in her
 18 calculation of the residual functional capacity. Thus, this error is not harmless
 19

20

¹ The Court does not find the record supports the ALJ's conclusion that Mr. Enfield attends church regularly. There is a single mention of church in reference to Mr. Enfield's rejection of medication for his bipolar disorder. AR 406.

1 because it cannot be considered inconsequential to the determination of disability.

2 *Molina*, 674 F.3d at 1115.

3 **3. Dr. Fligstein**

4 ALJ Robinson gave little weight to Dr. Fligstein's opinion. Dr. Fligstein
5 opined that Mr. Enfield was capable only of superficial contact and should work
6 away from the general public. Her opinion was consistent with that of Dr. Gomes.

7 The ALJ did not adopt the opinion because it "appear[ed] to rely heavily on
8 Dr. Gome's [sic] evaluation and his diagnoses of antisocial personality disorder
9 and anger impulse control issues." AR 14. As discussed previously, the ALJ did
10 not properly consider all of Dr. Gomes's opinion, so this alone cannot constitute a
11 legally sufficient reason to disregard Dr. Fligstein's opinion. *See supra* pp. 12-16.
12 Additionally, Dr. Fligstein references additional sources of information to form her
13 opinion than just Dr. Gomes's diagnoses. AR 63.

14 The ALJ failed to properly consider Dr. Fligstein's opinion. Again, because
15 none of Mr. Enfield's mental impairments were accounted for in his residual
16 functional capacity, this error is not harmless.

17 **C. The ALJ properly discounted Mr. Enfield's credibility.**

18 An ALJ engages in a two-step analysis to determine whether a claimant's
19 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533
20 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective

1 medical evidence of an underlying impairment or impairments that could
2 reasonably be expected to produce some degree of the symptoms alleged. *Id.*
3 Second, if the claimant meets this threshold, and there is no affirmative evidence
4 suggesting malingering, “the ALJ can reject the claimant’s testimony about the
5 severity of [his] symptoms only by offering specific, clear, and convincing reasons
6 for doing so.” *Id.*

7 In weighing a claimant's credibility, the ALJ may consider many factors,
8 including, “(1) ordinary techniques of credibility evaluation, such as the claimant's
9 reputation for lying, prior inconsistent statements concerning the symptoms, and
10 other testimony by the claimant that appears less than candid; (2) unexplained or
11 inadequately explained failure to seek treatment or to follow a prescribed course of
12 treatment; and (3) the claimant's daily activities.” *Smolen*, 80 F.3d at 1284. When
13 evidence reasonably supports either confirming or reversing the ALJ's decision, the
14 Court may not substitute its judgment for that of the ALJ. *Tackett v. Apfel*, 180
15 F.3d 1094, 1098 (9th Cir.1999). “General findings are insufficient: rather the ALJ
16 must identify what testimony is not credible and what evidence undermines the
17 claimant's complaints.” *Lester*, 81 F.3d at 834.

18 **a. Mr. Enfield's daily activities**

19 The Court already addressed the ALJ's alleged inconsistencies between Mr.
20 Enfield's mental impairments and his daily activities in the analysis regarding Dr.

1 Gomes's opinion. *See supra* pp. 12-16. Thus what remains here are the
 2 inconsistencies between Mr. Enfield's physical impairments (his back problems)
 3 and his daily activities.

4 The ALJ noted several activities of daily living that are inconsistent with Mr.
 5 Enfield's allegations of the level of impairment related to his back. In particular,
 6 the ALJ noted: personal care, meal preparation, light household chores, laundry,
 7 shopping, walking around an orchard, fishing, and mowing the lawn in stages. AR
 8 18. These activities are inconsistent with someone that alleges disabling back pain.

9 In addition, the record shows other activities that are inconsistent with
 10 disabling back pain. For example, in September 2011, after his alleged onset date,
 11 Mr. Enfield injured his back while splitting wood. AR 416-420. Mr. Enfield told
 12 emergency room staff that he believed he picked up too heavy a piece of wood. AR
 13 419. Again, in December 2012, Mr. Enfield sought treatment for injuring his upper
 14 back after lifting a heavy box at Costco. AR 451.

15 The Court does not find the ALJ erred when assessing Mr. Enfield's
 16 credibility because his activities of daily living are inconsistent with his alleged
 17 physical impairments.

18 **b. Inconsistency with the record**

19 The ALJ asserted that Mr. Enfield's statements regarding his time in prison
 20 are inconsistent with the record. For example, Mr. Enfield told Dr. Gomes that he

1 suffered hallucinations while in “the hole” in prison. AR 429. There is nothing in
2 the record to corroborate this. AR 362-385. Complicating the review, there are no
3 disciplinary records at all on file.

4 Although the prison records lack specificity, they do demonstrate that Mr.
5 Enfield was being treated with antipsychotic medication. This may or may not be
6 due to hallucinations, but it does demonstrate the diagnosis of some form of
7 psychotic disorder. Thus, the ALJ’s conclusion that the claimant has no established
8 psychotic disorder is not supported by the record. The Court does not need to rule
9 on whether the overall lack of evidence relating to Mr. Enfield’s allegations of his
10 experiences in prison, however, because the ALJ did not err in the finding of
11 credibility with regard to his daily activities.

12 **c. Failure to treat**

13 Also in consideration of Mr. Enfield’s credibility, the ALJ noted that he
14 failed to continue treatment for both mental and physical impairments. A
15 claimant’s statements may be less credible when treatment is inconsistent with the
16 level of complaints or a claimant is not following treatment prescribed without
17 good reason. *Molina v. Astrue*, 674 F.3d 1104, 1114 (9th Cir. 2012). When
18 refusing prescribed treatment, the reasons presented for not following the treatment
19 must be related to the mental impairment and not a matter of personal preference.

20 *Id.*

1 Mr. Enfield did seek treatment for his back issues as they arose, but he did
2 not continue with recommended physical therapy. AR 355. The record indicates
3 that he only attended one visit and never followed up for the second. *Id.* The ALJ
4 opined that this is not consistent with disabling pain, and the Court accepts this
5 opinion.

6 As previously discussed, Mr. Enfield was prescribed Celexa and Riperdal
7 during his time in prison. AR 375. Despite his own admission that he did better
8 while on the medication, Mr. Enfield chose not to continue the medications. AR
9 406. He opted rather to manage his condition “spiritually.” *Id.* The record,
10 however, does not demonstrate that he sought regular consultation with a religious
11 figure, and both he and Ms. Lortie stated that he did not attend church. AR 241,
12 262. Mr. Enfield also stated to Dr. Gomes that he has not sought any outpatient
13 mental health services. AR 428.

14 There is nothing that indicates Mr. Enfield’s treatment is not a matter of
15 personal preference, and thus the ALJ was permitted to use this lack of treatment in
16 an adverse credibility determination. *Molina*, 674 F.3d at 1114.

17 **D. The ALJ erred in part with regard to lay witness testimony.**

18 Mr. Enfield’s long-term girlfriend Ms. Lortie provided a third-party function
19 report in March 2012. AR 237-244. “Other sources” for opinions include nurse
20 practitioners, physicians’ assistants, therapists, teachers, social workers, spouses,

1 and other non-medical sources. 20 C.F.R. §§ 404.1513(d), 416.913(d). An ALJ is
2 required to “consider observations by non-medical sources as to how an
3 impairment affects a claimant's ability to work.” *Sprague v. Bowen*, 812 F.2d 1226,
4 1232 (9th Cir.1987). Non-medical testimony can never establish a diagnosis or
5 disability absent corroborating competent medical evidence. *Nguyen v. Chater*, 100
6 F.3d 1462, 1467 (9th Cir.1996).

7 An ALJ is obligated to give reasons germane to “other source” testimony
8 before discounting it. *Dodrill v. Shalala*, 12 F.3d 915 (9th Cir.1993). The ALJ
9 provides no reasons, much less germane ones, to discount Ms. Lortie’s testimony.
10 Rather, the ALJ does not address it at all. This in error.

11 An ALJ’s failure to consider competent lay witness testimony is harmless
12 only when “it can confidently conclude that no reasonable ALJ, when fully
13 crediting the testimony, could have reached a different disability determination.”
14 *Stout v. Comm’r of Soc. Sec.*, 454 F.3d 1050, 1056 (9th Cir. 2006). When applying
15 this rule, the Court must determine that failure to consider could not be
16 “inconsequential to the ultimate nondisability determination.” *Id.* at 1055. The
17 error must be non-prejudicial to the claimant. *Id.* However, “[w]here lay witness
18 testimony does not describe any limitations not already described by the claimant,
19 and the ALJ’s well-supported reasons for rejecting the claimant’s testimony apply
20 equally well to the lay witness testimony, it would be inconsistent with our prior

1 harmless error precedent to deem the ALJ's failure to discuss the lay witness
 2 testimony to be prejudicial per se." *Molina*, 674 F.3d at 1117.

3 The ALJ rejected Mr. Enfield's credibility. *See supra* pp. 16-20. So far as
 4 the information provided by Ms. Lortie that is based on subjective information by
 5 Mr. Enfield, the ALJ's failure to address this lay witness testimony would be
 6 harmless error. *See Molina*, 674 F.3d at 1117.

7 However, the ALJ entirely rejected Mr. Enfield's mental impairments. In
 8 turn, she rejected any objective observations of those. There were no "well-
 9 supported reasons for rejecting" Ms. Lortie's testimony because it was not based
 10 on credibility evaluations of Mr. Enfield. *Id.* With regard to objective statements
 11 by Ms. Lortie, the ALJ needed to provide germane reasons for discounting. Thus,
 12 the Court finds the ALJ erred in part with regard to Ms. Lortie's testimony.

13 **E. The ALJ Failed to Account for All of Mr. Enfield's Limitations in
 14 the Residual Functional Capacity and Erred in Steps Four and Five.**

15 An ALJ may accept or reject restrictions that are not supported by
 16 substantial evidence. *Osenbrock v. Apfel*, 240 F.3d 1157, 1164 (9th Cir.
 17 2001)(citing *Magallanes*, 881 F.2d at 756-57)). The ALJ was not required to
 18 accept the testimony of Mr. Enfield because he found him to be less than credible;
 19 however, he erred in other areas, particularly with regard to Mr. Enfield's mental
 20 impairments. Because the ALJ did not properly account for all of Mr. Enfield's

1 impairments, the Court finds that the residual functional capacity is incomplete. As
2 it flows from the incomplete residual functional capacity, the hypothetical
3 presented to the vocational expert and resulting determination that Mr. Enfield can
4 perform past relevant work, or alternatively, other work available in the national
5 economy, is flawed. *See DeLorme v. Sullivan*, 924 F.2d 841, 850 (9th Cir. 1991)
6 (holding that if a hypothetical fails to include all of limitations, the expert's
7 testimony has no evidentiary value).

8 **F. Remedy.**

9 The Court has the discretion to remand the case for additional evidence and
10 findings or to award benefits. *Smolen*, 80 F.3d at 1292. The Court may award
11 benefits if the record is fully developed and further administrative proceedings
12 would serve no useful purpose. *Id.* Remand is appropriate when additional
13 administrative proceedings could remedy defects. *Rodriguez v. Bowen*, 876 F.2d
14 759, 763 (9th Cir. 1989). In this case, the Court finds that further proceedings are
15 necessary for a proper determination to be made.

16 On remand, the ALJ shall credit the opinions of Drs. Gomes and Fligstein.
17 The ALJ will also consider the objective testimony related to Mr. Enfield's mental
18 impairments that Ms. Lortie provided. Once accepting these opinions, the ALJ
19 shall recalculate the residual functional capacity, considering all impairments, and
20 then evaluate, based on this updated residual functional capacity, Mr. Enfield's

1 ability to perform past relevant work, as well as work available in the national
2 economy.

3 **VIII. Conclusion**

4 Having reviewed the record and the ALJ's findings, the Court finds the
5 ALJ's decision is not supported by substantial evidence and contains legal error.

6 Accordingly, **IT IS ORDERED:**

7 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**,
8 **in part.**

9 2. Defendant's Motion for Summary Judgment, **ECF No. 19**, is **DENIED**.

10 3. The District Court Executive is directed to enter judgment in favor of
11 Plaintiff and against Defendant.

12 4. This matter is **REMANDED** to the Commissioner for further proceedings
13 consistent with this Order.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
Order, forward copies to counsel and **close the file**.

15 **DATED** this 11th day of March, 2016.

16
17 *s/Robert H. Whaley*
18 ROBERT H. WHALEY
19 Senior United States District Judge
20